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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,464	08/01/2003	John Mix	FINIS-00100	2040
28960	7590	06/28/2005	EXAMINER	
HAVERSTOCK & OWENS LLP 162 NORTH WOLFE ROAD SUNNYVALE, CA 94086			TRIEU, VAN THANH	
			ART UNIT	PAPER NUMBER
			2636	

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/632,464

Applicant(s)

MIX ET AL.

Examiner

Van T Trieu

Art Unit

2636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 April 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-6,8-14,17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8-14,17 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claims 1, 3-6, 8-14, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over **W. Lee et al** [US 6,837,827] in view of **L. Lee et al** [US 5,125,010]. Regarding claim 1, the claimed portable electronic device is configured to provide an audible signal at a repeated frequency selectable by a user wherein the repeated frequency corresponds to an interval between two tenths of a second to ten minutes and wherein the electronic device comprises (the portable personal training device 10 emits audible cues at a repeated frequency at one-second intervals selected by its user,

Art Unit: 2636

see Figs. 1, 3 and 12, col. 9, lines 21-36); and the timing unit contained within a waterproof housing (housing 92 is waterproof by gaskets or seals 96, see Fig. 1, col. 6, lines 19-28); and the timing unit comprises: a plurality of buttons configured to allow the user to select a single frequency as the repeated frequency (the user interface 50 having a plurality of buttons, see Figs. 1 and 2, col. 5, lines 26-33 and col. 9, lines 21-36); and the display configured to display a numerical representation of the repeated frequency selected by the user (the visual display 58, see Figs. 2-18, col. 5, lines 40-50 and col. 8, lines 21-47); and the power source (the battery 90, see Fig. 1, col. 6, lines 15-19); but **W. Lee et al** fails to disclose the detachable clip member configured to detachably couple to the timing unit and to a pair goggles. However, **W. Lee et al** teaches that the portable training/coach electronic device 10 is waterproof and attached to a user by an attachment mechanism 94 in the form of elastic such as armband type, waistband type, a belt-hook type or over-the-shoulder type for attaching/detaching to user's body. The portable training/coaching electronic device 10 can be used by an exerciser or other user on a land-base activities or water-base activities such as swimming, see Figs. 1-5, col. 3, lines 4-7, col. 5, lines 35-38, col. 6, lines 23-49, col. 11, lines 60-67 and col. 12, lines 1-22. **L. Lee et al** suggests that a swimming lap counting system having a water-resistant swimmer's unit 10 or 200 employing a transmitter 50 and a push-button 18 for timing by a swimmer. The swimmer's unit 200 is secured to the swimmer's goggles 210, see Figs. 1-3 and 5, col. 2, lines 30-59; col. 3, lines 5-68, col. 4, lines 1-18 and col. 7, lines 18-21. Therefore, it would have been obvious to one skill in the art at the time the invention was made to modify the attachment mechanism

Art Unit: 2636

of **W. Lee et al** for attaching and detaching to the swimmer's goggles of **L. Lee et al** because the attachment mechanism is form of elastic such as armband type, a belt-hook type, which can be adjusted to secure to the swimmer's goggles.

Regarding claim 3, all the claimed subject matters are discussed between **W. Lee et al** and **L. Lee et al** in respect to claim 1 above, see Fig. 2, col. 5, lines 25-38.

Regarding claim 4, all the claimed subject matters are discussed between **W. Lee et al** and **L. Lee et al** in respect to claim 1 above, such as plastic, nylon, aluminum or any combination thereof, see col. 6, lines 23-28.

Regarding claim 5, all the claimed subject matters are discussed between **W. Lee et al** and **L. Lee et al** in respect to claim 1 above, and including housing 92, programmable timing circuit, see col. 5, lines 44-58; and means for providing audio signal (audio component 80, see Fig. 1, col. 6, lines 6-8).

Regarding claim 6, all the claimed subject matters are discussed between **W. Lee et al** and **L. Lee et al** in respect to claims 4 and 5 above.

Regarding claim 8, all the claimed subject matters are discussed between **W. Lee et al** and **L. Lee et al** in respect to claim 5 above.

Art Unit: 2636

Regarding claim 9, all the claimed subject matters are discussed between **W. Lee et al** and **L. Lee et al** in respect to claims 1 and 5 above.

Regarding claim 10, all the claimed subject matters are discussed between **W. Lee et al** and **L. Lee et al** in respect to claim 5 above.

Regarding claim 11, all the claimed subject matters are discussed between **W. Lee et al** and **L. Lee et al** in respect to claims 1 and 5 above.

Regarding claim 12, all the claimed subject matters are discussed between **W. Lee et al** and **L. Lee et al** in respect to claim 11 above, and including the storage memory 64, see Figs. 1, 6 and 7, col. 5, lines 62-67, col. 6, lines 1-3 and col. 7, lines 32-52.

Regarding claim 13, all the claimed subject matters are discussed between **W. Lee et al** and **L. Lee et al** in respect to claim 11 above, and including the processor chip 60, see Fig. 1, col. 5, lines 11-65.

Regarding claim 14, all the claimed subject matters are discussed between **W. Lee et al** and **L. Lee et al** in respect to claim 13 above, and including converting cycle frequency to second time, see col. 9, lines 24-36.

Art Unit: 2636

Regarding claim 17, all the claimed subject matters are discussed between **W. Lee et al** and **L. Lee et al** in respect to claims 4 and 11 above.

Regarding claim 18, all the claimed subject matters are discussed between **W. Lee et al** and **L. Lee et al** in respect to claims 1 and 5 above.

### ***Response to Arguments***

2. Applicant's arguments filed on 13 April 2005 have been fully considered but they are not persuasive. Because,

#### Applicant's arguments:

(A) A timing/pacing device with features that are suitable for use as a coaching tool for training a team of swimmers, as well as an individual swimmer, is neither taught nor suggested by **W. Lee et al**.

(B) **W. Lee et al** neither teaches nor suggests a timing/pacing device with a clip for detachable coupling to goggles and detachably coupling to the timing unit of the device,

#### Response to the arguments:

(A) The portable training device of **W. Lee et al** is adapted to assist a user, exerciser and/or a swimmer in reaching performance, navigating, and accumulating performance statistics, which including timing function.

Art Unit: 2636

(B) It is obvious to combine the elastic attachment mechanism of **W. Lee et al** for attaching/detaching to a swimmer's goggles of **L. Lee et al** because the elastic mechanism can be adjusted to fit or to clip onto a swimmer's arm or goggles as desire.

### ***Conclusion***

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

4. Any inquiry concerning this communication or earlier communications from examiner should be directed to primary examiner **Van Trieu** whose telephone number is (571) 272-2972. The examiner can normally be reached on Mon-Fri from 7:00 AM to 3:00 PM.



Art Unit: 2636

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. **Jeffery Hofsass** can be reached on (571) 272-2981.

A handwritten signature in black ink, appearing to read 'Van Trieu', with a long, sweeping horizontal stroke extending to the right.

**Van Trieu**  
**Primary Examiner**  
**Date: 6/22/05**